

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

BEVERAGE MANAGEMENT, INC.,
SUBSIDIARY OF DR. PEPPER/7-UP BOTTLING
GROUP, INC. OF DALLAS, TEXAS ^{1/}

Employer

and

Case 9-RC-17604

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION 175 ^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{3/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} The name of the Petitioner appears as amended at the hearing.

^{3/} The Employer and Petitioner timely filed briefs which I have carefully considered in reaching my decision. Certain exhibits attached to the Petitioner's brief were not part of the record and have not been considered in reaching my decision, except I have taken administrative notice of the Decision which issued in Case 11-RC-6346.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is engaged in the wholesale and distribution of soft drinks and other non-alcoholic beverages out of its facilities located in Charleston, Beckley, Danville and Bluefield, West Virginia and Pulaski, Virginia, where it employs a total of 40 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees at these facilities. ^{4/}

The Petitioner seeks to represent a multi-location unit consisting of 1 semi-driver, 8 loaders, 1 warehouseman and 29 route sales drivers employed by the Employer at its Charleston, Beckley, Danville and Bluefield, West Virginia, and Pulaski, Virginia facilities. ^{5/} Both the semi-driver and the warehouseman work at the Beckley facility. Of the eight loaders, four work at Beckley, two work at Danville, one works at Bluefield and one works at Pulaski. Of the 29 route sales drivers, 8 work at Charleston, 12 work at Beckley, and 3 each work at Danville, Bluefield and Pulaski, respectively. At the hearing, the parties agreed that a unit including employees at these locations is appropriate. At the hearing, the Petitioner amended its petition to include any employees who might be hired into the newly-created pre-sales representative and delivery driver classifications. In this connection, the record discloses that beginning in January 2002, the Employer intends to hire employees into the newly-created classifications of pre-sales representative and delivery driver. The Employer plans to hire on January 7 and 21, 2002, three pre-sale representatives and four to six delivery drivers at its Charleston and Beckley locations. The parties stipulated that the semi-driver, loaders, warehouseman, route sales drivers and yet to be hired delivery drivers should be included in any unit found appropriate. The Employer, however, takes the position, contrary to the Petitioner, that the future pre-sales representatives should be excluded from the unit on the ground that they lack a community of interest with the other unit employees. Hence, the only issue for consideration is whether the pre-sales representative classification is appropriately included in the unit.

Rodger Collins is the regional vice-president and is responsible for the overall operations at the five facilities. Alexandros Mahairas is the general manager for the entire district in which the facilities are located. Each facility has one or two district managers. Based on the record, it appears that only the Beckley facility has supervision beyond the district manager.

^{4/} In its brief, the Employer asserts that it has 10 other unionized facilities where pre-sale representatives are not included in the driver/warehouse units. However, no evidence was elicited at the hearing concerning other unionized facilities operated by the Employer and the circumstances surrounding the exclusion of pre-sale representatives from bargaining units at such facilities are unknown. Thus, I have not considered such alleged bargaining history at other locations of the Employer in making my decision in this matter.

^{5/} Although the title of relief driver was not included in the petition, the parties stipulated at the hearing that there was one relief driver in the appropriate unit working at the Beckley facility. Based upon the parties' stipulation, I shall include the relief driver in the unit found appropriate.

Damon Moles and Ralph Manning are the district managers for both the Charleston and Danville facilities. Michael Pomeroy and Kyle Lilly, III, are the district managers for the Beckley facility. The Beckley facility also has a warehouse manager, Greg Lively, who supervises the warehouseman and the semi driver; a vending manager, Daniel Lively; and a load crew foreman, David Wilson. Finally, Rodney Meadors serves as district manager for the Pulaski facility, Ronald Smith is district manager for the Bluefield facility, and Thomas Kincade is district manager over both of these facilities. ^{6/}

The semi-driver works out of the Beckley facility and drives a semi-trailer delivering the Employer's product from its production to its distribution centers located around the states of West Virginia and Virginia. The semi-driver is normally scheduled to work from 6 a.m. to 2 p.m., but his hours may vary on a daily basis. He is supervised by the Beckley warehouse manager, Greg Lively. The Beckley warehouse employee, who is also supervised by Lively, unloads the semi-trailer, manages warehouse inventory and occasionally helps to load the route sales vehicles.

The route sales drivers sell and deliver the Employer's product to its retail customers. They are supervised by the district manager(s) of the facility out of which they work. Their daily sales and delivery routes are set by the district manager. The routes are located within the geographical territory of their respective facility. The route sales drivers operate side load trucks containing 12 to 16 bays, which are stocked each night by the loaders. The route drivers determine the shelf and cold box needs of each customer on their route and then fill the order from the stock in their trucks. They enter the customers' orders into a hand-held Palm, a computerized device which keeps track of the stock contained on the trucks. In addition, the route drivers place the products on shelves and arrange displays. They sell products to fill additional space where possible, i.e., off-shelf displays, and gain distribution of new products that are introduced by the Employer. Each night the loaders remove any unsold products from the route sales drivers' trucks. The loaders then load the trucks with products to be delivered the next day according to the load sheets, which are filled out by the route sales drivers. The load sheets tell the loaders the quantity of each product that should be loaded on the truck. The route sales drivers rely upon the past buying trends of each customer to determine the quantity of products needed on any given day.

The route sales drivers, like the semi-driver, work 8 to 12 hours per day. The record does not indicate the number of hours worked by the warehouseman and loaders, nor the starting and ending work times of the route sales drivers, warehouseman and loaders. The route sales drivers spend approximately 2 hours out of their workday at the facility to which they are assigned, about 30 minutes to 1 hour in the morning and 1 to 2 hours in the evening checking their trucks, loads and performing paper work. The route sales drivers wear a uniform consisting of pants and a shirt with the Employer's logo. The record does not indicate whether other employees in the unit wear uniforms. The semi-driver, warehouseman and loaders are paid hourly. The route sales drivers earn a base salary plus commission, which is based on the amount of product that they

^{6/} The parties stipulated that Mahairas, Moles, Manning, Pomeroy, Lilly, Greg Lively, Daniel Lively and Wilson possess indicia of supervisory authority within the meaning of Section 2(11) of the Act. Accordingly, I find that they are supervisors within the meaning of the Act and I shall exclude them from the unit.

sell. All employees, including members of management, are eligible for the same health benefits, can participate in the Employer's 401(k) plan and receive the same vacation benefits.

Beginning in January 2002 the Employer intends to commence phasing out the route sales delivery classification, essentially splitting its sales and delivery functions into two separate classifications – pre-sales representative and delivery driver. The Employer intends to fill these positions with current employees. Although the record does not clearly indicate that all newly-created positions be filled by current unit employees, I note that the Employer deems its current route sales drivers as sufficiently skilled to be trained for the pre-sales representative position. Indeed, the Employer expects that employees will typically progress from delivery driver to pre-sale representative once its new classification system is fully implemented. Employees who are hired into the pre-sales representative jobs will retain any seniority that they have acquired in other jobs. The Employer plans to retain at least one conventional routes sales position, at its Beckley location, with the possibility of retaining a second position at a location yet to be determined.

The record indicates that the pre-sale representative will assume all of the sales functions of the current route sales drivers, with the new delivery driver classification being solely responsible for delivering the product. Both classifications will work 8 to 12 hours per day and will be paid a base salary plus commission.^{7/} Like the route sales delivery drivers, pre-sale representatives will be responsible for selling products to customers to fill shelf, cold box and off-shelf displays, and securing the distribution of new products. However, it appears that pre-sales representatives will have a greater responsibility than the current route sales drivers for building customer relations to increase sales and advertising within the stores. Each pre-sale representative will service set routes within the geographic territory of the facility to which they are assigned. The initial routes instituted in January 2002 will be set by general manager Mahairas, with input from the district managers of the five facilities; however, as the classification change is fully implemented the district managers will set the daily routes. The district managers will supervise both delivery drivers and pre-sales representatives.^{8/}

^{7/} The record does not contain any information concerning the anticipated normal starting and ending work times or days of work for the delivery drivers or pre-sale representatives. Thus, there is no evidentiary basis for the Employer's assertion, made in its brief, that pre-sale employees will typically work a 9 a.m. to 6 p.m. schedule, often working on weekends while delivery drivers will typically work 6 a.m. or 7 a.m. to 2 p.m. daily, rarely working on weekends. Accordingly, I did not consider these factors in making a determination on the appropriateness of the unit. Likewise, there is insufficient record evidence upon which to base a finding that the pre-sales representatives will meet the criteria for exempt status under the Fair Labor Standards Act or, further, that the delivery employees will not. I note further that the record indicates that the Employer did not make this argument at the hearing, nor attempt to offer evidence in support of such a position. I do note, however, that both classifications are compensated in essentially the same manner.

^{8/} The Employer's assertions, made in its brief, that delivery drivers and warehouse employees will be supervised by distribution managers has no basis in the record. The record is void of any evidence showing that such a supervisory title exists, or will exist, at any of the five locations at which employees in the appropriate unit are employed. Indeed, the Employer's vice-president, Rodger Collins, testified that the delivery drivers would be supervised by the same district managers who currently supervise the route sales drivers. (Tr. 24)

Rather than selling product directly from stock contained in a truck, the pre-sales representatives will take orders from customers 1 day in advance. They will “telecom” this information to their respective facility, and the information will be used by the loaders to stock the trucks for delivery the following day. Pre-sale representatives will drive a company assigned car or small truck to perform their duties, which they will be permitted to take home. They will not be required to wear a uniform, but may wear dress pants and sport shirt. Although the delivery drivers will still be required to go to their respective facilities each day, pre-sale representatives will not be required to visit such facilities on a daily basis, thus potentially spending less time at the facility than the current route sales drivers. However, it is anticipated the pre-sale representatives will spend 1 to 2 hours per day communicating with their supervisors and the delivery drivers to ensure that the products they have sold have been properly recorded for delivery. Such communication will take place both face-to-face, at the facility, and via telephone.

ANALYSIS:

The Petitioner seeks to represent essentially all employees of the Employer, excluding office clerical employees, professional employees, guards and supervisors within the meaning of the Act, employed district-wide by the Employer. The Employer agrees that the multi-location unit sought by the Petitioner is appropriate but contrary to the Petitioner would exclude the newly-created pre-sales representative classification as lacking a community of interest with the other unit classifications. The Employer must establish, therefore, that the pre-sales representatives lack such a community of interest with other unit employees as to mandate their exclusion from the unit.

In analyzing community of interest among employee groups, the Board considers bargaining history; functional integration; employee interchange and contact; similarity of skills, qualifications and work performed; common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment. *Armco, Inc.*, 271 NLRB 350 (1984); *Atlanta Hilton & Towers*, 273 NLRB 87, 89 (1984). In assessing the community of interest shared between the future pre-sales representatives and other unit employees, I note first that all of the employees are directly linked to the sale and distribution of the Employer’s product. Moreover, the pre-sales representatives will be performing essentially the same sales function as the current route sales drivers, working approximately the same number of hours each day, with the same method of compensation and same supervisors. ^{9/}

In addition, the record demonstrates that a considerable level of functional integration will exist between the pre-sales representatives, loaders and delivery drivers. In this regard, the loaders and delivery drivers will depend upon orders transmitted to the facility by the pre-sales representatives in order to determine the amount of products that need to be loaded and delivered on any given day. Moreover, the pre-sale representatives will have to communicate with the delivery drivers on a daily basis to ensure that sales orders have been accurately communicated.

^{9/} The Employer has indicated that it will continue to employ at least one, and possibly two, route sales drivers even after full implementation of the pre-sale representative and delivery driver classifications.

The pre-sale representatives and the delivery drivers, whom the parties agree are appropriately included in the unit, share even greater common interests. Not only will they engage in daily interaction, but they will share the same supervisors (the district managers) and the same method of compensation (base salary plus commission).^{10/} Moreover, they will work approximately the same number of hours each day. The Employer expects that delivery drivers will typically progress to pre-sales representatives. Furthermore, the record shows that many, if not most, of the current route sales drivers will become pre-sale representatives and delivery drivers as the Employer fully implements its classification change. Thus, it appears that the pre-sales representatives will not be required to have any specialized training beyond that which will be provided by the Employer in-house. Finally, route sales drivers hired into the pre-sales representative jobs will retain their full seniority, as will any other unit employees hired into the position.

The overall evidence concerning integration of operations, commonality of supervision, wages, hours and benefits as well as the high degree of interchange between the pre-sale representatives and the route sales and delivery drivers establishes that the pre-sale representatives will share a strong community of interest with the other unit employees in the appropriate unit. In arguing to the contrary, the Employer makes numerous factual assertions in its brief concerning the terms and conditions of employment of the pre-sale representatives that are not found in the record. In making my findings, I am constrained by the record evidence, which does not establish that the pre-sale representatives enjoy a sufficiently distinct community of interest from other employees to compel their exclusion from the unit found appropriate. See, *Overnite Transportation Company*, 322 NLRB 723 (1996). Although the pre-sales representatives will not be required to wear uniforms and their primary job function does not involve the loading and delivery of product, as is the case with delivery drivers, the semi-driver, the warehouseman and loaders, I view these differences as being only minimally significant when compared to the otherwise strong community of interest shared between the groups.

The Employer's reliance on *Plaza Provision Co.*, 134 NLRB 910 (1961), is misplaced. In *Plaza Provision*, the Board modified its previous policy with respect to the unit placement of "driver salesmen," which had held that driver salesmen, like truck drivers, should always be included in production and maintenance units unless the parties agreed to exclude them. In modifying this policy, the Board reasoned that in some cases driver salesmen have distinct interests which might militate against their compelled inclusion in a production and maintenance unit. *Id.* at 911-912. However, the Board did not find, as argued by the Employer, that sales employees must be excluded from a delivery and warehouse unit. Indeed, the Board has stated that it does not have any per se rules to include or exclude any classification of employees in any unit and that community of interest must be examined. Cf. *Airco, Inc.*, 273 NLRB 348 (1984). Moreover, in *Plaza Provision*, like in the other cases cited by the Employer, the Board was faced with the question of whether the classification sought to be included by the employer shared such a community of interest with the employees in the otherwise appropriate unit sought by the petitioning union to compel the inclusion of the dispute classification in the same unit. See e.g., *John G. Merkel & Sons*, 232 NLRB 140 (1977); *Alaska Fish & Farm Products*, 212 NLRB 730

^{10/} The record contains no testimony from Collins, as asserted by the Employer in its brief, that pre-sale representatives will be eligible to receive incentive compensation made available by the beverage manufacturers whose products the Employer distributes.

(1974) and *Airborne Freight Corporation*, 263 NLRB 1376 (1982). Here, however, the Employer seeks to exclude the pre-sale representatives from an otherwise appropriate unit and the record does not establish that their interests are so separate and distinct to require that they be excluded. To the contrary, the overwhelming evidence demonstrates that the pre-sale representatives share a sufficient community of interest with the other unit employees to warrant their inclusion in the same unit.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All semi-drivers, loaders, warehouseman, route sales drivers, pre-sales representatives, delivery drivers and relief driver employed at the Employer's Charleston, Beckley, Danville and Bluefield, West Virginia and Pulaski, Virginia facilities, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 175.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359

(1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 27, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 3, 2002**.

Dated at Cincinnati, Ohio this 20th day of December 2001.

/s/ Richard L. Ahearn

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